



METROPOLITAN  
TRANSPORTATION  
COMMISSION

Agenda Item No. 4  
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## *Memorandum*

TO: Operations Committee

DATE: May 7, 2010

FR: Executive Director

W.I. 1221

RE: Clipper<sup>SM</sup> Memorandum of Understanding: MTC, AC Transit, BART, Caltrain, Golden Gate Transit District, SFMTA, Samtrans, VTA

At this Committee's November 2009 Operations meeting, staff notified Committee members that the Executive Director had delivered a notice of intent to withdraw from the TransLink<sup>®</sup> Consortium, effective July 1, 2010. Since this notice, staff has worked with Consortium members to craft a smooth transition from the current structure to MTC management of the Clipper program. This memorandum describes our future approach and recommends that this Committee refer the following actions to the Commission for its approval: (1) MTC's withdrawal from the TransLink<sup>®</sup> Interagency Participation Agreement (IPA), and (2) negotiation and execution of a successor Clipper Memorandum of Understanding with Alameda-Contra Costa Transit District (AC Transit), the San Francisco Bay Area Rapid Transit District (BART), the Peninsula Corridor Joint Powers Board (Caltrain), the Golden Gate Bridge Highway and Transportation District (Golden Gate Transit District), the City and County of San Francisco, acting by and through its Municipal Transportation Agency (SFMTA), the San Mateo County Transit District (Samtrans), and the Valley Transportation Authority (VTA).

### Background

Following assignment of the TransLink<sup>®</sup> Contract to Cubic Transportation Systems, MTC asked that the TransLink<sup>®</sup> Management Group (TMG) reconsider the Consortium governance structure to address concerns about the efficiency and effectiveness of the existing structure. The Consortium's strategic planning consultant assisted the TMG to research options and ultimately, through an agency working group, a Joint Powers Authority (JPA) structure was recommended. The TMG did not approve this alternative approach; its members did not feel that they were prepared to transition to a JPA at that time and defined future precursor conditions prior to further consideration of a JPA. Because of the inefficiency and ineffectiveness of the existing joint decision-making framework of the Consortium structure, MTC notified the TMG of our intention to withdraw, effective July 1, 2010. The IPA permits members to withdraw from the Consortium as long as notice is provided by November 1, prior to the start of the next fiscal year.

In the ensuing months, MTC staff worked with legal counsel and staff representatives from all agencies currently operating Clipper<sup>SM</sup> to negotiate a memorandum of understanding (MOU) that would serve as the successor agreement to the IPA. The primary focus of the MOU would be to

define the basic agreements among MTC and the Operators. It was our joint intent to carry forward existing IPA terms as much as possible to allow an expedited review and approval.

#### Clipper<sup>SM</sup> Memorandum of Understanding

MTC will initially execute the MOU with the agencies currently operating Clipper<sup>SM</sup> services, including AC Transit, BART, Caltrain, Golden Gate Transportation District, and SFMTA, as well as with the two remaining operators who are nearing revenue ready status: Samtrans and VTA. Attachment A summarizes the key principles of the proposed MOU. Remaining outstanding issues include:

- Finalizing clauses in the MOU for the Operator review of MTC records and audits and revenue sharing.
- Revising the Operating Rules. The Operating Rules themselves are not part of the MOU; however, the MOU requires transit operators to comply with them, so up-to-date Operating Rules are necessary prior to the effective date of the MOU.
- Agreeing upon a process for regular operator consultation in support of successful operation of the service. This is not defined in the MOU to ensure flexibility. While details will be defined outside of the MOU, MTC has agreed in the MOU to provide regular updates to Operators at least once a quarter.

#### Cost Allocation Commitment

Based on the cost allocation formula, MTC has estimated our future costs through the term of the MOU. Historically, MTC has relied largely on the State Transit Assistance (STA) program to meet this commitment. With the restoration of STA funds at approximately \$9 million per year to MTC's Regional Program, we project that MTC can meet our commitment over the next several years. However, STA program revenues are less than previously predicted, so it is likely that we will face an operating shortfall in 5 or 6 years (FY 2016-17). We will continue to examine strategies to address this and are confident that we have enough time to identify alternative funding sources or cost reduction strategies before any problem would occur. At a minimum, MTC may need to revisit Clipper<sup>SM</sup> funding assumptions in the next federal programming cycle. High level cost and revenue projections are shown in Attachment B.

#### Schedule for MOU Execution

Transit operators have expressed a desire to have the MOU executed to coincide with MTC's withdrawal. While all parties have shown good faith to try to meet this goal, it no longer appears to be feasible, due primarily to the lead time required for board approvals. Also, while we have agreement in principle on almost all aspects of the MOU, the revision to the Operating Rules will have to be mutually agreed upon before the MOU can be executed. Accordingly, the Operators are scheduling their board approvals between the months of June and August.

While it is desirable to have the MOU in place when MTC's withdrawal from the Consortium becomes effective, it is not contractually necessary. The cost and revenue allocation formula in the IPA survives MTC's withdrawal, and MTC, as the TransLink<sup>®</sup> Contractor, is responsible for operating the Clipper<sup>SM</sup> system on behalf of the transit operators. The process for transferring the bank accounts from BART to MTC is underway. Therefore, we do not believe that we need an

MOU in place by July 1, but seek your authorization this month to keep momentum behind the transition moving.

Recommendation

Staff recommends that this Committee refer this item to the Commission for (1) approval of MTC's withdrawal from the TransLink<sup>®</sup> Interagency Participation Agreement and 2) authorization of the Executive Director or his designee to negotiate and enter into a Clipper<sup>SM</sup> Memorandum of Understanding with participating Clipper<sup>SM</sup> operators, as described in principles outlined in Attachment A.

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Steve Heminger

SH:mc

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## **Attachment A Principles of MOU**

The recommended MOU defines:

1. *High level responsibilities of MTC and the Operators.* Items of note include:

For MTC:

- confirm existing obligations under the Clipper<sup>SM</sup> Contract to collect and disperse revenues to the participating agencies, according to the stated cost and revenue sharing formula;
- acknowledge responsibility for management of bank accounts and fiduciary duty to the cardholders;
- notify Operators of changes to Operating Rules, participate in consultation process on Rules changes, and provide regular reports to the Operators;
- pay fixed operating costs, specified variable costs and other lump sum and capital costs, and operator incentive fees; and
- make project records available to the operators (exact terms not yet agreed-upon).

For the Operators:

- implement and operate Clipper<sup>SM</sup> ;
  - pay specified variable operating costs; and
  - accept ownership of equipment one year after acceptance.
2. *Cost and revenue allocation formula.* The formula first adopted in the IPA is carried with minor revisions. Operating costs allocated to MTC and the Operators are specified described, and any changes require an amendment to the MOU. Operators agree to periodic reviews of the cost allocation formula to support fairness among Operators and accommodate changes.
  3. *Process for dispute resolution.* The TransLink<sup>®</sup> IPA called for, but never defined such a process. The proposed process first calls for informal dispute resolution and then allows escalation to mediation or arbitration, binding or nonbinding, as agreed by the parties.
  4. *Process for Operator input on MTC-proposed changes to Operating Rules.* MTC will provide at least 90 day notice for any changes impacting Operators' Roles and Responsibilities, and consult further with Operators, if requested. Disagreement about changes impacting Operators are subject to the dispute resolution process in the MOU, if the consultation process fails to result in agreement.
  5. *Process for new operator participation.* To implement Clipper<sup>SM</sup>, an agency must sign a supplemental agreement with MTC, agreeing to the terms of the MOU. MTC will not sign a supplemental agreement until Cubic and the operator are ready to implement Clipper.
  6. *Term of the MOU.* The MOU is effective on the date when all parties have signed the MOU and will terminate at conclusion of the Clipper<sup>SM</sup> Contract (November 2 2019), unless otherwise terminated by the parties.

**Attachment B**  
**Clipper<sup>SM</sup> Cost and Revenue Analysis**

1. MTC's Share of Total Program Costs through FY 14/15

	<b>Amount (millions)</b>
<b>Costs</b>	\$103.5
<b>Revenues</b>	\$106.6
<b>Balance</b>	\$3.1

2. MTC's Share of Capital Costs through FY 14/15

	<b>Amount (millions)</b>
<b>Costs</b>	\$47.8
<b>Revenues</b>	\$50.9
<b>Balance</b>	\$3.1

3. MTC's Share of Operating Costs through FY 14/15

	<b>Amount (millions)</b>
<b>Costs</b>	\$55.7
<b>Revenues</b>	\$55.7
<b>Balance</b>	\$0.0

REQUEST FOR COMMISSION APPROVAL

Summary of Proposed Memorandum of Understanding

Work Item No.: 310-2741

Parties: MTC, AC Transit, BART, Caltrain, Golden Gate Transit District, SFMTA, Samtrans, VTA

Project Title: Clipper<sup>SM</sup> Memorandum of Understanding

Purpose of Project: To formalize continuing obligations of MTC to participating Clipper<sup>SM</sup> transit operators and participating operators to MTC regarding the operation of and payment for the Clipper<sup>SM</sup> automated fare payment system.

Project Cost Not to Exceed: \$0. (MOU is not the basis for expenditure of funds for Clipper)

Fiscal Impact: MOU offsets a portion of MTC's costs under Clipper<sup>SM</sup> Contract. MTC fixed and operating costs are authorized under Clipper<sup>SM</sup> Contract, consistent with annual agency budgets.

Motion by Committee: That the Executive Director or his designee is authorized to negotiate and enter into a Memorandum of Understanding with AC Transit, BART, Caltrain, Golden Gate Transit District, SFMTA, Samtrans, and VTA, as described above, effective upon signature by all parties through November 2, 2019.

Operations Committee:

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Amy Rein Worth, Chair

Approved: Date: May 14, 2010

